

[61 FR 32540, June 24, 1996, as amended at 63 FR 7075, Feb. 12, 1998]

§ 600.525 Atlantic herring fishery.

(a) *Initial specifications.* The initial specifications of OY, DAH, DAP, JVP, TALFF, and reserve (if any) have been established by the PMP for Atlantic herring approved on July 6, 1995. These annual specifications will remain in effect unless adjusted pursuant to the provisions specified in paragraph (b) of this section.

(b) *Procedures to adjust initial specifications.* NMFS may adjust these initial specifications upward or downward to produce the greatest overall benefit to the United States at any time prior to or during the fishing years for which the initial specifications are set by publishing notification in the FEDERAL REGISTER with the reasons for such adjustments. Any notice of adjustment may provide for public comment. Adjustments to the initial specifications may take into account the following information:

(1) The estimated domestic processing capacity and extent to which it will be used.;

(2) Landings and catch statistics.;

(3) Stock assessments.

(4) Relevant scientific information.

Subpart G—Preemption of State Authority Under Section 306(b)

§ 600.605 General policy.

It is the policy of the Secretary that preemption proceedings will be conducted expeditiously. The administrative law judge and counsel or other representative for each party are encouraged to make every effort at each stage of the proceedings to avoid delay.

§ 600.610 Factual findings for Federal preemption.

(a) The two factual findings for Federal preemption of state management authority over a fishery are:

(1) The fishing in a fishery that is covered by an FMP implemented under the Magnuson-Stevens Act is engaged in predominately within the EEZ and beyond such zone.

(2) A state has taken any action, or omitted to take any action, the results of which will substantially and ad-

versely affect the carrying out of such FMP.

(b) Whether fishing is engaged in “predominately” within or beyond the EEZ will be determined after consideration of relevant factors, including but not limited to, the catch (based on numbers, value, or weight of fish caught, or other relevant factors) or fishing effort during the appropriate period, and in light of historical patterns of the distribution of catch or fishing effort for such stock or stocks of fish.

(c) Whether relevant effects are substantial will be determined after consideration of the magnitude of such actual or potential effects. Relevant to this determination are various factors, including but not limited to, the proportion of the fishery (stock or stocks of fish and fishing for such stocks) that is subject to the effects of a particular state’s action or omission, the characteristics and status (including migratory patterns and biological condition) of the stock or stocks of fish in the fishery, and the similarity or dissimilarity between the goals, objectives, or policies of the state’s action or omission and the management goals or objectives specified in the FMP for the fishery or between the state and Federal conservation and management measures of the fishery.

[61 FR 32540, June 24, 1996, as amended at 63 FR 7075, Feb. 12, 1998]

§ 600.615 Commencement of proceedings.

(a) *Notice of proposed preemption.* (1) If a proceeding under this part is deemed necessary, the Administrator must issue a notice of proposed preemption to the Attorney General of the State or States concerned. The notice will contain:

(i) A recital of the legal authority and jurisdiction for instituting the proceeding.

(ii) A concise statement of the § 600.610 factual findings for Federal preemption upon which the notice is based.

(iii) The time, place, and date of the hearing.